

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RUSSELL TRANSPORT, INC.,

Plaintiff,

v.

VASCOR, LTD.,

Defendant.

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Cause No. 3:18-cv-00395

**SUBJECT TO ANY AND ALL FEDERAL RULE OF CIVIL PROCEDURE 12(B)
DEFENSES, VASCOR, LTD.'S NOTICE OF REMOVAL**

Subject to any and all Federal Rule of Civil Procedure 12(b) defenses, and pursuant to sections 1441 and 1446, Title 28 of the United States Code, Vascor, Ltd. files this Notice of Removal, removing Cause No. 2018DCV4554 from County Court at Law Number Three of El Paso County, Texas to the United States District Court for the Western District of Texas:

1. On December 3, 2018 Plaintiff Russell Transport, Inc. filed their Original Petition and Request for Disclosure which was assigned to the County Court of Law Number Three ("State Court") in El Paso County, Texas, Cause No. 2018DCV4554, and was styled *Russell Transport, Inc. v. Vascor, Ltd.*
2. The State Court's record reflects service of process on Vascor, Ltd. dated December 11, 2018. *See* Ex. A. State Ct. R. p. 3.
3. Vascor Ltd.'s removal is timely as it is filed within thirty days of December 11, 2018 as required by 28 U.S.C. § 1446(b). 28 U.S.C. § 1446(b) (2011).

REMOVAL IS PROPER BASED ON DIVERSITY JURISDICTION

A. Total Diversity Exists Among the Parties.

4. Subject matter jurisdiction exists pursuant to section 1332, Title 28 of the United States Code, diversity jurisdiction.

5. Pursuant to section 1332, the district courts have original jurisdiction over all civil actions arising between citizens of different States where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. *Stiftung v. Plains Mktg., L.P.*, 603 F.3d 295, 297 (5th Cir. 2010).

6. Diversity must exist at the time a lawsuit is commenced. *Coury v. Prot*, 85 F.3d 244, 248-49 (5th Cir. 1996).

7. A corporation is considered a citizen of (1) every U.S. State and foreign state where it is incorporated, and (2) the U.S. State or foreign state where it has its principal place of business as per 28 U.S.C. § 1332(c)(1). 28 U.S.C. § 1332(c) (2011).

8. Plaintiff alleges it is “a domestic corporation authorized to do business in the State of Texas.” *See* Ex. A. State Ct. R., Pl.’s Pet. p. 1 ¶ 1.

9. Plaintiff correctly alleges Vascor, Ltd. is a foreign corporation. *Id.* p. 1 ¶ 2. Vascor Ltd.’s principal place of business is in Georgetown, Kentucky.

10. Because Plaintiff and all Defendants are citizens of different states, complete diversity exists among the parties. *Corfield v. Dall. Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003)

B. The Amount in Controversy Requirement is Satisfied

11. The amount in controversy exceeds \$75,000.00 as required by section 1332(a). 28 U.S.C. § 1332(a) (2011).

12. Russell Transport, Inc.’s claims arise from an alleged breach of a “written Contract for Motor Carrier Transportation Services whereby Russell Transport provided transportation services to Vascor, Ltd. in exchange for a negotiated rate.” *See* Ex. A. State Ct. R., Pl.’s Pet. p. 1 ¶ 5.

13. Per Russell Transport, Inc.’s pleading, it seeks “Judgment against the Defendant for the sum of \$470,168.55.” *Id.* p. 2 ¶ E(a).

14. Given Russell Transport, Inc.'s pleaded claim for \$470,168.55, Russell Transport, Inc. seeks to recover in excess of \$75,000.00. The Court therefore has subject matter jurisdiction over this case.

PROPER VENUE AND COMPLIANCE WITH REMOVAL PROCEDURE

15. Pursuant to section 1441(a), venue of the removed action is proper in this Court as it is the district which embraces the place where the State action is pending. 28 U.S.C. 1441(a) (2011).

16. Vascor, Ltd. will give adverse parties written notice of the filing of this Notice of Removal as required by section 1446(d). Vascor, Ltd. will also promptly file a copy of this Notice of Removal with the County Clerk of El Paso, Texas.

17. True and correct copies of all process, pleadings, and any Orders served in the State court action are being filed with this Notice of Removal, as required by section 1446(a). *See* Ex. A, State Court R.

Accordingly, Vascor, Ltd., pursuant to and in conformity with the requirements set forth in 28 U.S.C. § 1446, respectfully removes Cause No. 2018DCV4554 from the County Court at Law Number Three of El Paso County, Texas to the United States District Court for the Western District of Texas, El Paso Division.

<Signature page follow.>

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing document was served via electronic service on Plaintiffs through their counsel of record on this 28th day of December, 2018.

/s/ Ancel E. Escobar
Ancel E. Escobar